

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RESEARCH SCIENTIFIC SERVICES LLC,)
)
 Petitioner(s),)
)
 v.) Docket No. 11424-19 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER AND DECISION

In this collection due process (CDP) case, petitioner seeks review pursuant to section 6330(d)(1) of the determination by the Internal Revenue Service (IRS or respondent) to uphold the filing of a notice of intent to levy.¹ Respondent has moved for summary judgment under Rule 121, contending that there are no disputed issues of material fact and that his determination to sustain the collection action was proper as a matter of law. We agree and accordingly will grant the motion.

Background

The following facts are based on the parties' pleadings and respondent's motion papers, including the attached declarations and exhibits. See Rule 121(b). Petitioner's last known address, as shown on its petition, is a post office box in Gaithersburg, Maryland. Petitioner's website describes it as engaged in the selling and servicing of laboratory equipment.

On August 13, 2018, the IRS issued petitioner a Final Notice of Intent to Levy (levy notice). The liabilities appearing in the levy notice were assessed after petitioner did not pay the taxes reported on its Forms 940, Employer's Annual Federal Unemployment Tax Return, for 2009 and 2010, and on its Forms 941, Employer's Quarterly Federal Tax Return, for the last three quarters of 2015. Petition-

¹All statutory references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure. We round all monetary amounts to the nearest dollar.

er's aggregate employment tax liabilities, including applicable interest and penalties, exceed \$200,000.

Petitioner timely requested a CDP hearing, and the case was assigned to a settlement officer (SO) in the IRS Appeals Office. The SO verified that the employment tax assessments had been properly made, that the IRS had timely sent notice and demand for payment, that there remained a balance due, and that the levy notice otherwise complied with applicable law and administrative procedure.

On March 13, 2019, the SO mailed petitioner a letter scheduling a telephone CDP hearing for April 16, 2019. This letter explained that the SO could not consider collection alternatives unless petitioner submitted a Form 433-B, Collection Information Statement for Businesses, supporting financial information, and signed tax returns for several periods for which petitioner had failed to file. The SO requested that petitioner submit the missing tax returns within 21 days and the other documents within 14 days.

Petitioner submitted no documents before the hearing and did not call in for the scheduled telephone conference. On April 17, 2019, the SO sent petitioner a "last chance" letter, offering it an additional 14 days to submit the requested information and anything else that petitioner wished the SO to consider. On May 30, 2019, having received no response from petitioner, the Appeals Office issued a notice of determination sustaining the collection action.

On June 25, 2019, Robert Moffatt--an officer of petitioner and its representative in this case--wrote the SO after receiving the notice of determination. Mr. Moffatt stated that, in addition to the collection action involving petitioner's unpaid employment taxes, the IRS also sought to collect certain taxes from him personally. Mr. Moffatt represented that he was negotiating with an IRS collection officer about his individual liabilities. Assuming that those negotiations would also resolve petitioner's employment tax liabilities, Mr. Moffatt suggested that the notice of determination may have been issued in error.

On June 28, 2019, petitioner filed a timely petition seeking review of the notice of determination. Attached to the petition was the letter, dated June 25, 2019, from Mr. Moffatt to the SO. Petitioner did not otherwise assign error to the IRS' determination.

Discussion

A. Summary Judgment

The purpose of summary judgment is to expedite litigation and avoid costly, time-consuming, and unnecessary trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). The Court may grant summary judgment when there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). In deciding whether to grant summary judgment, we construe factual materials and inferences drawn from them in the light most favorable to the nonmoving party. Sundstrand Corp., 98 T.C. at 520. However, the nonmoving party may not rest upon mere allegations or denials of his pleadings but instead must set forth specific facts showing that there is a genuine dispute for trial. Rule 121(d); see Sundstrand Corp., 98 T.C. at 520. We conclude that there are no material facts in dispute and that this case is appropriate for summary adjudication.

B. Standard of Review

Section 6330(d)(1) does not prescribe the standard of review that this Court should apply in reviewing an IRS administrative determination in a CDP case. But our case law tells us what standard to adopt. Where (as here) the taxpayer's underlying tax liability is not before us,² we review the IRS' decision for abuse of discretion only. Goza v. Commissioner, 114 T.C. 176, 182 (2000). Abuse of discretion exists when a determination is "arbitrary, capricious, or without sound basis in fact or law." Holloway v. Commissioner, T.C. Memo. 2007-175, 94 T.C.M. (CCH) 25, 28, aff'd, 322 F. App'x 421 (6th Cir. 2008).

C. Analysis

In determining whether the SO abused his discretion we consider whether he: (1) properly verified that the requirements of any applicable law or administrative procedure had been met, (2) considered any relevant issues petitioner raised, and (3) determined whether "any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of * * * [peti-

²Petitioner did not dispute its employment tax liabilities at the CDP hearing and is thus precluded from challenging those liabilities here. See Thompson v. Commissioner, 140 T.C. 173, 178 (2013); sec. 301.6320-1(f)(2), Q&A-F3, Proced. & Admin. Regs.

tioner] that any collection action be no more intrusive than necessary.” See sec. 6330(c)(3). Our review of the record establishes that the SO satisfied all three requirements.

In its response to the motion for summary judgment, petitioner admits that it was at fault for failing to participate in the CDP proceedings, an error attributable to Mr. Moffat’s mistaken belief that he “was resolving the issue with the [other] IRS officer.” Mr. Moffat represents that he has now executed an installment agreement with the IRS covering his personal liabilities, and he expresses hope that a similar agreement can be reached covering petitioner’s employment tax liabilities. Unfortunately, we cannot consider that option in this CDP case because petitioner failed to propose any collection alternative to the SO. See Solny v. Commissioner, T.C. Memo. 2018-71, at *10 (“We have consistently held that it is not an abuse of discretion for an Appeals officer to reject collection alternatives and sustain collection action where (as here) the taxpayer has failed, after being given sufficient opportunities, to supply the necessary information.”); see also Gentile v. Commissioner, T.C. Memo. 2013-175, 106 T.C.M. (CCH) 75, 77, aff’d, 592 F. App’x 824 (11th Cir. 2014). However, petitioner is free to submit to the IRS at any time, for its consideration and possible acceptance, a collection alternative, in the form of an offer-in-compromise or an installment agreement, addressing the employment tax liabilities involved here.

It appears to us that petitioner and Mr. Moffatt are genuinely interested in resolving all of their tax liabilities in a coherent manner. Mr. Moffatt expresses concern that a levy on petitioner’s assets would “put the existing personal installment agreement at risk,” which would be an unfortunate turn of events. We are hopeful that respondent’s counsel will work with the other IRS officers involved in this process to secure a sensible and comprehensive resolution.

In consideration of the foregoing, it is

ORDERED that Respondent’s Motion for Summary Judgment, filed January 24, 2020, is granted as set forth above. It is further

ORDERED and DECIDED that the determinations set forth in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated May 30, 2019, upon which this case is based, are sustained.

(Signed) Albert G. Lauber
Judge

ENTERED: **MAR 17 2020**